# UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION TWENTY-FIVE SUBREGION THIRTY-THREE

ALLIED STONE COMPANY<sup>1</sup>
Employer,

and 25-RD-131754

JESSE HARE

Petitioner,

and

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 150
Union

#### DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on July 11, 2014, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine whether the petition is barred by the current collective bargaining agreement between the Employer and the Union.<sup>2</sup>

#### I ISSUE

The Petitioner seeks a decertification election within a unit comprised of all full time and regular part time production, service, and maintenance employees used in the operation of power driven equipment working out of the Employer's Milan, Illinois facility, but excluding

<sup>2</sup> Upon the entire record in this proceeding, the undersigned finds:

a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.

- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

<sup>&</sup>lt;sup>1</sup> The name of the Employer is corrected consistent with the stipulation of the parties at hearing.

professional employees, office clerical employees, guards and supervisors as defined in the Act.<sup>3</sup> The parties agree that there is a current collective bargaining agreement between the Employer and Union which is effective May 3, 2010, to May 3, 2015. The Petitioner and the Employer contend, however, that there is no contract bar to the filing of the decertification petition since the contract can only operate as a bar for three years. The Union argues that the petition should be barred by the collective bargaining agreement because the three-year contract bar should be extended to five years. In the alternative, the Union argues that the contract bar should be extended from three years to five years if employees covered by the collective bargaining agreement freely ratify the five-year contract.

#### II. DECISION

For the reasons discussed in detail below, based on the record and relevant Board law, I conclude that the contract bar applies only for the first three years of a collective bargaining agreement, and thus, there is no contract bar in the instant case. Therefore, an election will be held in the following unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part time production, service, and maintenance employees used in the operation of power driven equipment working out of the Employer's Milan, Illinois facility, but excluding professional employees, office clerical employees, guards and supervisors as defined in the National Labor Relations Act, as amended.

### III. STATEMENT OF FACTS

The Employer, an Illinois corporation, is engaged in the production of crushed stone, sand, and gravel. The Employer's facility, hereinafter referred to as the Allied Quarry, located at 601 US Route 67 North, Milan, Illinois, is the only facility involved in this matter.<sup>4</sup>

The Union represents heavy equipment operators throughout northern Illinois, part of Iowa, and northwest Indiana. The Union and the Employer have been parties to various collective bargaining agreements, with the most recent collective-bargaining agreement being effective from May 3, 2010, to May 3, 2015. That agreement states that it is between Allied Stone, a Division of Riverstone Group, Inc., and the Union, Local Union No. 150, International Union of Operating Engineers.

The Employer and the Union began negotiations for the current collective-bargaining agreement on April 23, 2010. The bargaining committee consisted of Union Treasurer Marshall Douglas, Union Business Agent Stephen Russo, an Allied Quarry Employee, a Midway Quarry

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<sup>&</sup>lt;sup>3</sup> At the hearing the parties stipulated that this was the appropriate bargaining unit. In addition, this is the unit currently recognized in the collective bargaining agreement between the Employer and the Union.

<sup>&</sup>lt;sup>4</sup> Riverstone Group, Inc. (which is the parent company of the Employer) and the Union maintain separate contracts for Riverstone Group's various facilities, which include the Allied Quarry, the Cleveland Quarry, and the Midway Quarry.

Employee, a Cleveland Quarry Employee, Employer Representative Marshall Guth, and Employer's Attorney Robert Boeye.<sup>5</sup> Before new contract negotiations began, the Union met with employees at the Union's District 8 Hall in Rock Island, Illinois, to discuss upcoming negotiations and issues such as wages, benefits, working conditions, and length of the contract. At the April 23, 2010, bargaining committee negotiation meeting, the Employer proposed that the term of the contract extend for five years. The bargaining committee met again on April 28, 2010. The final bargaining session occurred on May 17, 2010, where the Employer and Union reached a tentative agreement. On May 22, 2010, the Union held a ratification meeting at its District 8 Hall where it explained the tentative agreements, including the duration of the contracts, to employees from the Cleveland Quarry, the Allied Quarry, and the Midway Quarry. The Union explained to employees that due to uncertainty with the new health care law and its affect on insurance rates, the employees would need to meet at a later date to vote on how to divide financial increases in the fourth and fifth year of the contract. The Union also explained that if the employees rejected the contract, the Union would schedule another negotiation session with the Employer to address any additional issues. After voting by secret ballot, twenty-two employees voted in favor of ratification, and one employee voted against ratification. After the meeting where the employees ratified the contract, the Union and the Employer made final revisions and signed the five-year collective bargaining agreement.<sup>6</sup>

On March 20 and 21, 2013, the Union and the Employer exchanged e-mails concerning the distribution of financial increases among the employees' health and welfare and pension. The following week, the Union met with employees to discuss the distribution, and the employees voted how they wanted the financial increases distributed in 2013 and 2014. During this meeting, there were no discussions about the duration of the contract. The Union then notified the Employer via e-mail about the outcome of the employee vote regarding the distribution of financial increases.

#### IV. DISCUSSION

As set forth above, both the Petitioner and the Employer contend that there is no contract bar. The Union argues that the Board's established three-year contract bar should be lengthened to five years, or in the alternative, that the three years should be extended to five years when employees ratify a five-year contract, as occurred in the instant case.

When a petition for an election is filed for a unit of employees covered by a collective bargaining agreement, the Board must decide whether the collective bargaining agreement constitutes a bar to the election. This is known as the contract bar doctrine. The doctrine is intended to balance the statutory policies of stabilizing labor relations and facilitating employees' exercise of free choice in the selection or change of a bargaining representative. <u>Direct Press</u> Modern Litho, Inc., 328 NLRB 860 (1999), citing Appalachian Shale Products Co., 121 NLRB

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<sup>&</sup>lt;sup>5</sup> Midway Quarry and Cleveland Quarry employees were present for negotiations because the Midway Quarry, Cleveland Quarry, and Allied Quarry contracts are negotiated at the same time. <sup>6</sup> The Employer and the Union have used a similar negotiation and ratification process for predecessor agreements as they used during the 2010 negotiations for the current collective-bargaining agreement. Predecessor agreements have also lasted for five-year terms.

1160 (1958). The doctrine is Board created, not imposed by the Act or judicial case law, and the Board has considerable discretion to formulate and apply its rules. NLRB v. Dominick's Finer Foods, 28 F.3d 678 (7th Cir. 1994). A contract may serve as a bar to a representation election only for up to three years after its execution. General Cable Corp., 139 NLRB 1123, 1125 (1962) ("Contracts of definite duration for terms up to 3 years will bar an election for their entire period; contracts having longer fixed terms will be treated for bar purposes as 3-year agreements and will preclude an election for only their initial 3 years."); see also General Dynamics Corp., 175 NLRB 1035 (1969). The party asserting a contract bar bears the burden of proof. Road & Rail Services, Inc., 344 NLRB 388 (2005).

The Union raises policy arguments that the three-year contract bar rule exists under the guise of protecting employee free choice when it actually creates instability for collective bargaining relationships that rely on five-year agreements. Further, the Union argues that in this case the employees' free choice was protected because the employees were fully informed of the contract's five-year term when the employees ratified it, and the employees' choice was further reinforced by the fact that the employees later ratified the financial distribution for years four and five of the contract.

Despite the Union's policy arguments that the three-year contract bar creates instability for collective bargaining relationships and that employee free choice was protected by the ratification process in the instant case, the undersigned clearly has no authority to overrule or ignore what is clear Board precedent and policy. The contract bar applies only for the first three years of a collective bargaining agreement, General Cable Corp., 139 NLRB 1123 (1962), and thus, there is no contract bar in the instant case. Any changes to Board policy would have to be considered by the Board.

## V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit described above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the Union. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

### A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees

<sup>&</sup>lt;sup>7</sup> The undersigned takes administrative notice of the Decision and Direction of Election in Case 25-RD-105145, where the Union raised the same argument regarding the extension of the contract bar rule. No contract bar was found in that case under the Board precedent of <u>General Cable Corp.</u>, 139 NLRB 1123 (1962). The Board denied the Union's request to review this Decision and Direction of Election because the Union raised no substantial issues warranting review.

engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

## B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsion Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Subregional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by the undersigned to assist in determining an adequate showing of interest. In turn, the list shall be made available to all parties to the election.

To be timely filed, the list must be received in the Subregional Office, 300 Hamilton Boulevard, Suite 200, Peoria, Illinois, 61602-1246 **on or before August 1, 2014.** No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency website, <a href="www.nlrb.gov">www.nlrb.gov</a>, by mail, or by facsimile transmission at (309) 671-7095. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election please furnish a total of two copies of the list, unless the list is submitted by facsimile or electronically filed, in which

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<sup>&</sup>lt;sup>8</sup> To file the list electronically, go to the Agency's website at <u>www.nlrb.gov</u>, select **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

case no copies need be submitted. If you have any questions, please contact the Subregional Office.

# C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on **August 8, 2014**, at 5:00 p.m. (ET), unless filed electronically. Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically. If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at <a href="www.nlrb.gov">www.nlrb.gov</a>. Once the website is accessed, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure

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<sup>&</sup>lt;sup>9</sup> A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

SIGNED IN Indianapolis, Indiana, this 25<sup>th</sup> day of July 2014.

Rik Lineback

Regional Director

National Labor Relations Board

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Region 25, Subregion 33

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